

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

**Petition of BNE Energy Inc. for a  
Declaratory Ruling for the Location,  
Construction and Operation of a 4.8 MW  
Wind Renewable Generating Project on  
Winsted-Norfolk Road in Colebrook,  
Connecticut (“Wind Colebrook North”)**

**Petition No. 984**

**June 1, 2011**

**BNE ENERGY INC’S OBJECTION TO  
MOTION TO STRIKE DRAFT INTERIM REPORT**

The petitioner, BNE Energy Inc. (“BNE”), respectfully submits this objection to the Motion to Strike BNE Energy Inc.’s Draft Interim Report filed by FairwindCT, Inc., Susan Wagner and Stella and Michael Somers (the “Grouped Parties”) on May 31, 2011 (the “Motion”). In support of its objection, BNE states as follows:

1. The Grouped Parties state that the Siting Council, in this Petition, specifically required BNE to submit its Draft Interim Report by May 15, 2011.
2. Despite making this assertion, the Grouped Parties cannot point to any portion of the Transcript where the Siting Council specifically ordered BNE to provide the Draft Interim Report by May 15, 2011, nor can the Grouped Parties point to any document issued by the Siting Council requiring BNE to provide the Draft Interim Report by May 15, 2011. That is because, despite the Grouped Parties’ protestations to the contrary, the Siting Council *never* ordered a date by which the Draft Interim Report was to be submitted.
3. Indeed, the two references used by the Grouped Parties to support their Motion demonstrate that no order as to a specific date was ever issued by the Council.
4. In their citation of the colloquy from April 28, 2011, the Grouped Parties demonstrate that the only thing that was discussed at that time was providing the

findings of the Draft Interim Report in “mid-May.” Motion, p. 3. Admittedly, Mr. Tidhar was himself targeting a “May 15<sup>th</sup> deadline,” however, that was not a deadline ever issued in the record in this Petition by the Siting Council. *Id.*

Neither of the references used by the Grouped Parties show that the Siting Council itself entered a deadline or requirement for a specific date by which the Draft Interim Report was to be filed.

5. The Grouped Parties’ Motion also ignores the fact that even if the Siting Council issued a May 15<sup>th</sup> deadline for the submittal of the Draft Interim Report, the Siting Council had closed the hearing for this petition on May 5, 2011.

6. By virtue of the hearing being closed on May 5, 2011, the Grouped Parties never would have had an opportunity to cross examine BNE’s witnesses with respect to the Draft Interim Report, even if the report was issued on May 15, 2011.

Therefore, the argument on page 1 of their Motion that “will not be afforded an opportunity for cross-examination” with respect to the Draft Interim Report is without merit. The Grouped Parties were never to be afforded that opportunity.

7. Moreover, the Grouped Parties’ claim that they were not afforded an opportunity to otherwise comment on the Draft Interim Report is equally flawed. The Grouped Parties’ Motion itself provides comment on the Draft Interim Report, including critiques on the timing and duration of the survey, the failure to survey for nocturnal species, the limited value of conclusions, the limits of the geographic scope of the study, the existence of endangered and threatened species at the site and alleged deficiencies in the formula used by WEST. *See* Motion, p. 4, n. 1. While BNE disputes the Grouped Parties’ comments with respect to the

Draft Interim Report, it notes that the Grouped Parties did indeed make such comments and cannot now claim that they were precluded from doing so.

8. If “the very purpose of the May 15, 2011, deadline in the first place” was to allow the Grouped Parties to comment on the Draft Interim Report, footnote one of their Motion shows that they were able to do so, and have therefore not suffered the undue prejudice they claim. *See* Motion, p. 5 (emphasis in original).
9. The purpose of the May 15, 2011 alleged “deadline” could not have been to provide the Grouped Parties with an opportunity for cross examination regarding the Draft Interim Report, since the Siting Council closed the hearing at 9:05 p.m. on May 5, 2011. There was no opportunity for any party to cross examine witnesses once the hearing was closed. As a result, the Grouped Parties could not have suffered the undue prejudice they claim.
10. Given this lack of undue prejudice, the Grouped Parties’ Motion is without merit and should be denied.

WHEREFORE, BNE objects to the Grouped Parties’ Motion to Strike the Draft Interim Report and respectfully requests that the Siting Council deny the Motion. The Grouped Parties have failed to demonstrate any undue prejudice and their Motion should therefore be dismissed.

Respectfully Submitted,  
BNE ENERGY INC.

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## Certification

This is to certify that a copy of the foregoing has been mailed via U.S. Mail, first class postage prepaid, and/or electronically mailed on this date to all parties and intervenors of record.

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